22 FEB 1980

OGC Has Reviewed

STAT MEMORANDUM FOR: [redacted]
Special Assistant to the General Counsel

STAT FROM: [redacted]
Deputy Chief, Information Services Staff, DDA

SUBJECT: S. 2284 - National Intelligence Act of 1980

REFERENCE: Your Memorandum, Same Subject, dated 12 February 1980

1. In addition to agreeing to the "comments and issues paper" of the Charter Working Group attached to reference, we forwarded reference to the DDA Offices for their comments.

2. The Offices of Finance and Training have no additional comments. The Offices of Communications, Logistics, and Security have forwarded their comments to you directly. The Office of Data Processing has no additional comments other than to reinforce their comments expressed in their memorandum to you dated 14 December 1979 (copy attached).

[redacted] STAT

Attachment

STAT DC/ISS: [redacted] mes (22 Feb 80)

Distribution:
Original - Addressee w/att
1 - ISS Subj w/o att
1 - ISS Chrono

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

S. 2284 - National Intelligence Act of 1980

20 Feb

STAT FROM:

STAT Chief, Information Services Staff

EXTENSION

NO ISS 80-120/1

DATE

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Director of Communications	OGC 2/21 (verbally)			
2.				
3. Director of Data Processing				
4.				
5. Director of Finance	No comment 2/22			
6.				
7. Director of Logistics	to OGC 2/22			
8.				
9. Director of Security	OGC 2/22			
10.				
11. Director of Training	No comment 2/19			
12.				

Forwarded herewith is a copy of S. 2284, the "charter" bill recently introduced by the SSCI. Also attached is an OGC report on the bill and seven "issues papers" regarding items that have not been resolved within the intelligence community.

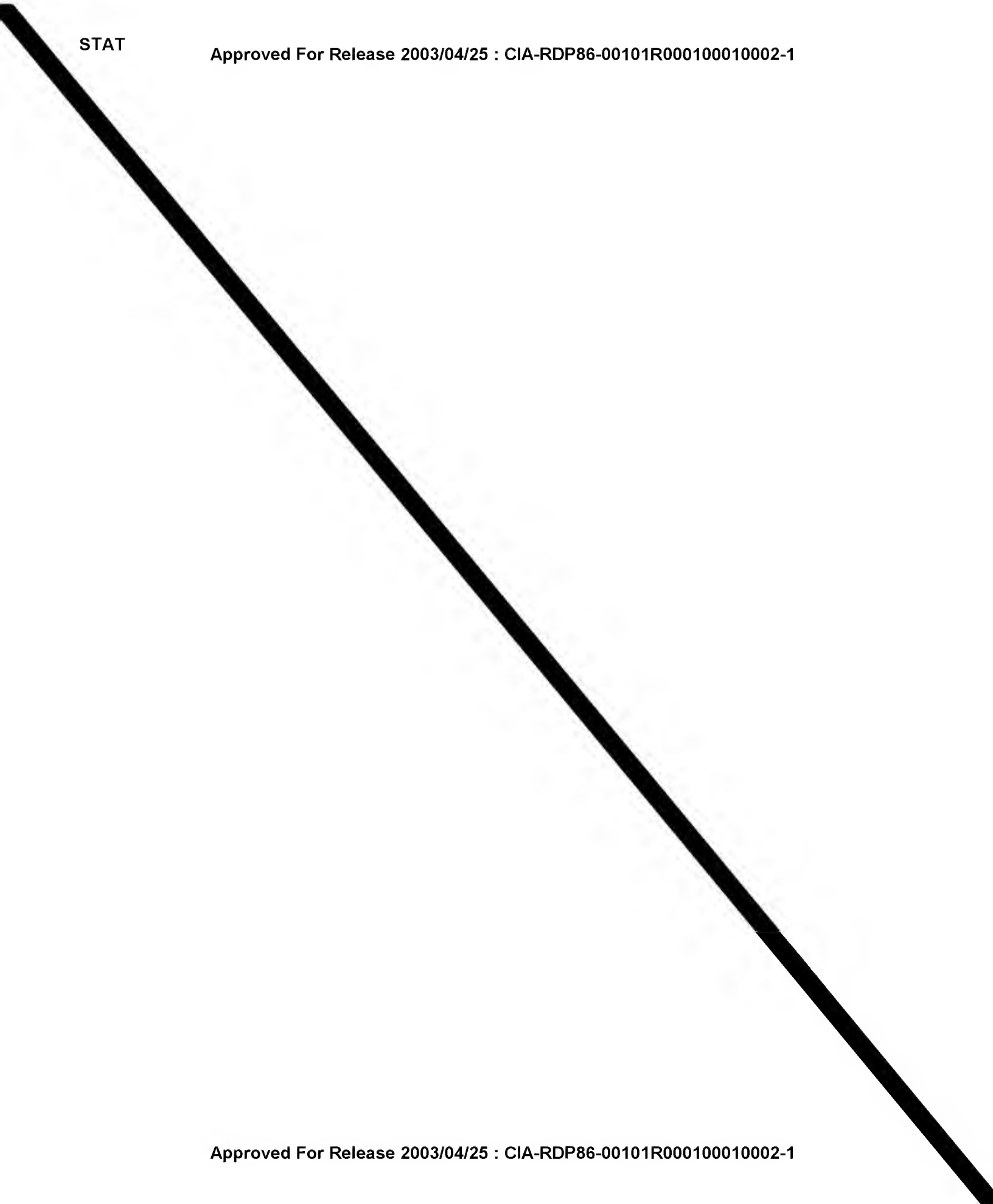
I am forwarding this material for your review and any comments you may wish to forward to OGC. As you will note, Admiral Turner is tentatively scheduled to testify 28 February. Therefore, any comments or changes which need to be made should be in OGC's hands by 21 February. If you wish, I will be happy to collate DDA comments. However, you may wish to go directly to OGC. STAT

Atts: a/s

Distribution:
Orig PRS - D/OC w/atts
1 - Each other adse w/atts
1 - ISS Subject w/atts
1 - ISS Chrono

STAT C/ISS ydc (14 Feb 80)

FORM 610 USE PREVIOUS EDITIONS



Approved For Release 2003/04/25 : CIA-RDP86-00101R000100010002-1

12 February 1980

MEMORANDUM FOR: See Distribution

STAT FROM: [redacted]
Special Assistant to the General Counsel

SUBJECT: S. 2284 - National Intelligence Act of 1980

1. Attached for your information is a copy of the subject bill which was introduced by the SSCI on 8 February 1980. Also attached is a copy of a memorandum from the General Counsel to David Aaron which forwards a Charter Working Group report on S. 2284 and seven "issues papers" on issues that have not yet been resolved within the Administration.

2. Hearings are scheduled to begin on 21 February 1980 with the DCI tentatively scheduled to appear on 28 February. I will be in touch if any specific questions arise about matters that will be covered in the DCI's statement.

STAT [redacted]

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Office of General Counsel

12 February 1980

MEMORANDUM FOR: David Aaron
Deputy Assistant to the President
for National Security Affairs

FROM: Daniel B. Silver
Chairman, Intelligence Charter Working Group

SUBJECT: Intelligence Charter Package

1. Attached are two documents:

a. A report of the Intelligence Charter Working Group. This report lists the significant differences between the SSCI bill and what the Working Group would recommend be the Administration position. In addition, it sets forth a number of issues within the Executive Branch that require Presidential resolution.

b. A memorandum from the Director of Central Intelligence to the President relating to the DCI's proposed presentation of the Administration position on the SSCI bill. It would seem appropriate to present this memorandum to the President at the same time as the Working Group report.

2. It would be desirable to have a definitive Administration position on the points and issues set forth in the Working Group report prior to the opening of hearings on the SSCI bill. Discussions with the SSCI staff suggest that questioning of the Administration witnesses will go beyond the ostensible general purposes of the opening days of hearings next week.

STAT

Daniel B. Silver

Attachments

WORKING GROUP REPORT

ON

INTELLIGENCE CHARTER LEGISLATION

On February 8, 1980 Senators Huddleston, Bayh, Mathias and Goldwater, on behalf of the Senate Select Committee on Intelligence (SSCI), introduced a new comprehensive intelligence Charter bill, "The National Intelligence Act of 1980." Although the bill was not introduced as a joint Administration-SSCI product, in very large measure it reflects compromises and agreements reached between the SSCI staff and the Intelligence Charter Working Group (represented by its chairman).

The purpose of this report is to list what appear to the Working Group to be significant differences between the bill and the draft the Working Group would have recommended. A list of the key issues is set out in Section A, together with the Working Group's recommendations. If the President approves the Working Group recommendations, these points will be transmitted to the SSCI as Administration positions, and the Administration will seek appropriate modification of the bill in the course of the legislative process.

In addition, a small number of points are still the subject of disagreement within the Executive Branch. These points are set forth in Section B of this report for resolution by the President. An issue paper on each of the issues within the Executive Branch is attached at Tab A.

The discussions between the Working Group Chairman and the SSCI staff have been fast-moving in recent weeks. While the Working Group members have been kept fully informed of the evolution of the agreed provisions found in the SSCI bill, there has not been an opportunity for review of the draft by the Special Coordination Committee of the NSC. Nor has there been time for a thorough review of the draft in the light of last-minute compromises reached in order to reduce the number of issues requiring Presidential resolution. Consequently, even after determination of the Administration position on the issues presented in this report, a certain number of changes, largely technical in nature, may have to be made in the course of the legislative process. It is not anticipated that these changes would require further decisions by the President or that they would give rise to major disputes between the SSCI and the Administration.

A. REMAINING DIFFERENCES BETWEEN THE ADMINISTRATION AND THE SSCI

Set forth below are a series of points on which the Working Group feels that the Administration should take exception to provisions of the SSCI bill.

1. Prior Reporting to Congress of Special Activities

The bill requires (section 142) that the two congressional intelligence committees be kept "fully and currently informed" of all intelligence activities, including "any significant anticipated intelligence activities." It also provides (section 125) that each high-risk special activity and each category of lower-risk special activity covered by a Presidential finding shall be considered a "significant anticipated intelligence activity," thus requiring prior notice, except that for a period of forty-eight hours such prior notice may be limited to the chairmen and ranking minority members of the two oversight committees and the majority and minority leaders of the two Houses of Congress.

The Working Group recommends that the Administration take a firm position against any prior reporting requirement for special activities. The Working Group recommends that any accommodation of the congressional desire for prior notification of certain categories of major or long-term special activities be accomplished through legislative history and not through statutory language. The concepts of timely notification and the obligation to keep the committees "currently" informed should suffice to ensure that prompt notice of significant activities (ordinarily before the event) is given while retaining necessary Presidential flexibility to preserve security in exigent circumstances, especially when human lives are at stake.

2. Prior Reporting of Other Significant Intelligence Activities

As the bill is formulated, it would require prior reporting to the two intelligence committees of significant anticipated intelligence collection activities, in addition to special activities. This requirement, while found in Executive Order 12036, is not at present embodied in statutory law. The Working Group recommends that the Administration position be opposed to the inclusion of such a provision in the Charter bill, even were some form of prior reporting

to be accepted for special activities. Foreign intelligence collection is a vital aspect of the President's exercise of his responsibility for the conduct of foreign affairs and protection of the national security. In contrast to special activities, intelligence collection is more clearly within the ambit of exclusive Executive Branch authority. Furthermore, a statutory requirement to report sensitive collection activities in advance to the oversight committees would significantly restrict the flexibility now available to the President with regard to the collection of intelligence. It is, in our view, unnecessary to appropriate oversight, given the extensive oversight powers elsewhere provided to the two intelligence committees. As with special activities, a requirement to keep the Congress fully and currently informed would suffice without excessively impairing flexibility.

3. Absence of Intelligence Source and Method Protection in the Oversight Process

The bill does not include in the congressional oversight section (section 142) a key phrase that the Working Group considers it essential to insert as a condition to the Executive Branch's obligation to keep the oversight committees informed. This is that such obligation should be "consistent with all applicable authority and duties, including those conferred by the Constitution upon the Executive and Legislative Branches and by law to protect sources and methods." The underlined words are not included in the SSCI bill. The function of this phrase is to provide authority for withholding from the oversight committees extremely sensitive information, such as the true identities of agents or information furnished by foreign liaison services who do not wish it shared with the Legislative Branch of our government. Without a clear statutory basis for protecting such information, the ability of the intelligence agencies to deal with sources and foreign governments would be impaired. The information in question is not of the kind required for proper oversight. Moreover, the phrase at issue is included in section 3-4 of E.O. 12036. Failure to include it in the Charter bill, therefore, would be a retreat for the Executive Branch from present oversight arrangements.

STAT

5. Wartime Waiver

The SSCI bill contains no general provision permitting the President to waive restrictions on intelligence activities in time of war, although there is a limited war-time waiver provision with respect to the prohibition on cover use of certain institutions. The Working Group recommends that the Administration support the inclusion of a general war-time waiver provision to read as follows:

> "(a) The President may waive any or all of the restrictions on intelligence activities set forth in this Act during any period--
>
> (1) in which the United States is engaged in war declared by Act of Congress; or
>
> (2) covered by a report from the President to the Congress under the War Powers Resolution, 87 Stat. 555, to the extent necessary to carry out the activity that is the subject of the report.
>
> (b) When the President utilizes the waiver authority under this section, the President shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate in a timely manner and inform those committees of the facts and circumstances requiring the waiver."

Although considerably improved over S. 2525, the SSCI bill still contains a variety of restrictions and requirements, both procedural and substantive, whose full impact cannot

be anticipated or fully understood. In time of war, these restrictions and procedures may prove to impede necessary action, forcing the President to choose between danger to the national security and deliberate violation of the law. The limited waiver proposed by the Working Group would deal with these exigent circumstances, while at the same time preventing any potential abuse by requiring notification to the two oversight committees.

6. FOIA Amendment

The SSCI bill provides (section 421(d)) an exemption from the Freedom of Information Act for certain CIA operational and technical files, except in the case of "first person" requests by United States persons. This provision, while acceptable to CIA, fails to provide any relief for the NSA and other Intelligence Community components that also have confronted serious problems under the FOIA. The Working Group prefers the formulation proposed by the Director of Central Intelligence, under which the DCI would be empowered to designate operational and technical files not only within the CIA but in any component of the Intelligence Community, and thereby exempt such files from the FOIA except in the case of first person requests. Language for this purpose is set forth at Tab B. The Working Group recommends that the Administration support modification of the SSCI bill to accomplish this broader FOIA relief.

7. Protection of Identities

The SSCI bill contains a provision establishing criminal penalties for disclosure of the identity of an undercover intelligence officer or agent (Title VII). The provision, however, would apply only to a person who had authorized access to classified information and would not cover aiders, abettors, accomplices or conspirators who knowingly assisted in the commission of the offense. The Working Group considers this provision inadequate and recommends that the Administration support a more extensive provision. There is disagreement, however, between CIA and the Department of Justice as to the scope of the substitute provision the Administration should support. An issue paper on this point is included in Tab A. The Working Group proposes that the Administration advance whichever of the alternate formulations is chosen by the President.

8. Foreign Intelligence Surveillance Act

The SSCI bill contains amendments to the Foreign Intelligence Surveillance Act (FISA) for purposes of including physical searches in its scope. The Working Group feels that

the Administration should not support a legislative proposal dealing with the FISA without at the same time taking account of significant inadequacies in the FISA that have become apparent since its enactment. The changes required to remedy these problems are:

a. Modification of the targeting standards to permit targeting of dual nationals who occupy senior positions in the government or military forces of foreign governments, while at the same time retaining United States citizenship. Frequently the activity of such persons when they visit the United States on official business is not such as to bring them under the quasi-criminal targeting standard now found in the FISA.

b. Modification of the targeting standards to permit targeting of former senior foreign government officials even if they are not acting in the United States as members of a foreign government or faction. Again, this problem was not anticipated at the time the FISA was passed, but various situations have arisen in which it is clear that a former foreign government official (such as a deposed head of state) who is present in the United States may have significant foreign intelligence information. Under present law such an official can be targeted only if a member of a foreign faction or government.

c. Clarification of the FISA to make it clear that the Attorney General, in authorizing the limited category of surveillances not subject to court order, has the same power as the court to authorize non-consensual entry of premises to effectuate the surveillance.

d. Extension of the emergency surveillance period from twenty-four to forty-eight hours. Recent experience indicates that the twenty-four-hour period is inadequate, leading to the necessity of delaying implementation of emergency surveillances.

A classified memorandum from the National Security Agency setting forth reasons for these changes to the FISA is attached at Tab C.

B. DIFFERENCES REQUIRING RESOLUTION WITHIN THE EXECUTIVE BRANCH

Attached at Tab A are seven issues papers describing issues that require resolution by the President and as to which there is not unanimity among the departments and agencies represented on the Working Group. These issues are:

1. Should the provisions imposing criminal penalties for unauthorized disclosure of identities of intelligence personnel follow the Justice Department or the CIA version.

2. Should positive foreign intelligence collection directed against United States persons by extraordinary techniques be authorized only if the court finds that the intelligence sought is "significant" foreign intelligence.

3. Should CIA and NSA employees serving overseas receive benefits comparable to State Department employees.

4. Should NSA overseas employees be provided special retirement benefits equivalent to the CIA retirement system.

5. Should the Intelligence Oversight Board be given express authority to review the internal practices, procedures and guidelines of the intelligence agencies.

6. Should the bill contain a requirement that entity heads report to the Intelligence Oversight Board intelligence matters specified by the President.

7. Should the Central Intelligence Agency have statutory authority to obtain data collected by other entities of the Intelligence Community, including data obtained by technical collection systems, for purposes of processing and analysis.

In closing, it should be again emphasized that this report and the agreed portions of the SSCI bill have undergone numerous last-minute changes. Consequently, there may be further issues internal to the Executive Branch or between the Administration and the SSCI. In addition, there is the unavoidable risk that compromises reached under some time pressure will appear unacceptable to the parties upon later reflection.

STAT

[redacted]

Daniel B. Silver
General Counsel, CIA
Chairman, Intelligence Charter
Working Group

Issue 1: Should the provisions imposing criminal penalties for unauthorized disclosure of identities of intelligence personnel follow the Justice Department or the CIA version.

There is agreement among the Working Group that the Charter should contain criminal provisions for the unauthorized disclosure of the identities of undercover intelligence personnel. The version contained in the SSCI bill would cover only disclosures made by present or former employees of the United States Government or other persons having authorized access to classified information and would not apply to persons who are accomplices or co-conspirators with such government employees in bringing about the unauthorized disclosures. The Working Group is of the opinion that the Charter provisions should go farther. There is, however, disagreement between the Justice Department and the CIA as to the nature of the proposal that should be made. The Justice Department has proposed a bill for this purpose, a copy of which is attached. The CIA prefers the bill introduced by the fourteen Members of the House Permanent Select Committee on Intelligence (H.R. 5615), but with the addition of certain portions of the proposed Justice Department bill. The CIA version also is attached.

Justice Department Position:

The Department of Justice supports new legislation to penalize the unauthorized disclosure of information that identifies covert intelligence agents. The Justice Department also believes, however, that such legislation must be effective in order to achieve those purposes. The criminal provision proposed by CIA for inclusion in the intelligence Charter legislation will not, in the opinion of the Justice Department, be effective and raises serious constitutional as well as enforcement and prosecution difficulties. An alternative provision has been proposed by Justice and approved personally by the Attorney General. Justice believes this alternative minimizes potential difficulties and provides a meaningful deterrent and prosecutive basis for harmful disclosures. Accordingly, the Justice Department's alternative should be the version included in the Charter legislation that is endorsed by the President.

The Justice Department version provides criminal penalties in a variety of situations and covers both employees and non-employees. It would be a crime under that proposal for any present or former government employee who has ever had access as such an employee to information concerning identities

of covert agents to disclose such information to any unauthorized person whether or not the disclosure is based on official sources, pure speculation, or publicly available information. This provision in combination with the general federal conspiracy and accomplice statutes would also provide a basis for prosecution in appropriate cases of private persons or publishers acting in concert with former employees who make unauthorized disclosures.

In addition, the Justice Department's bill would provide a criminal penalty for any person, whether or not a present or former government employee, who discloses information identifying covert agents when such disclosure is based on classified information.

The Justice Department proposal would minimize the constitutional difficulties inherent in the CIA version which would, in addition to persons covered under the Justice Department proposal, authorize prosecution of any private citizen who, without any collaboration with a government employee or any access to classified information, discloses publicly available information that relates to the identities of covert agents. The Justice Department provision does not require, as does the CIA version, that the disclosure be made with an intent to impair or impede U.S. foreign intelligence activities. Inclusion of this requirement will make prosecution excessively difficult and is likely to present serious evidentiary and "graymail" problems, problems that are minimized in the Justice approach.

CIA Position:

CIA believes that the Administration should support the identities provision included in the attached CIA draft, which incorporates the terms of H.R. 5615, the identities bill co-sponsored by all the Members of the House Permanent Select Committee on Intelligence (HPSCI), and also incorporates the principal provision of the attached Justice Department bill. The difference between the two versions is that the CIA version would permit prosecution of a person who did not have authorized access to classified information, but who discovered the identity of an undercover U.S. intelligence officer or agent through any of a variety of means, including leaks or physical surveillance. This category would include those who are doing the greatest damage at present and who we believe, but could not prove in a court of law, are in collaboration with renegade former U.S. Government employees. Constitutional objections to prosecution without proof that

the disclosure was based on classified information are fully overcome by a specific intent requirement under which the government must prove beyond a reasonable doubt that the perpetrator acted for the purpose of impairing or impeding U.S. intelligence activities. It is the CIA's view that no respectable journalist could have any reason to fear prosecution under such a statute.

The plain fact is that any statute dealing with the disclosure of identities necessarily raises constitutional questions, since it purports to regulate a form of speech. The real issue is whether this kind of speech can be regulated because its serious threat to important social issues outweighs its social utility. We think that the answer to this question was well stated by the Attorney General in his recent lecture at Columbia Law School:

> The existing law provides inadequate protection to the men and women who serve our nation as intelligence officers. They need -- and deserve -- better protection against those who would intentionally disclose their secret mission and jeopardize their personal safety by disclosing their identities. Public comment and criticism of intelligence activities and specific operations is proper. Revealing the identities of particular intelligence personnel and placing them in danger, on the other hand, serves no legitimate purpose. Our proper concern for individual liberties must be balanced with a concern for the safety of those who serve the nation in difficult times and under dangerous conditions.

If one accepts that this pernicious activity requires criminal regulation, it is imperative that any new legislation enacted be capable of application to the known present perpetrators of these disclosures. Given investigative constraints which preclude most means of discovering and proving connections between those who publish lists of undercover CIA officers and their suspected sources of this information, the HPSCI formulation seems to provide the only possibility under which such individuals could be prosecuted based on their own public activities and expressed intentions.

The Department of Defense supports the CIA position.

APPENDIX -- DEPARTMENT OF JUSTICE BILL

A BILL

To prohibit the disclosure of information identifying certain individuals engaged or assisting in foreign intelligence activities of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Intelligence Identities Protection Act."

STATEMENT OF FINDINGS

Sec. 2. The Congress hereby makes the following findings:

(a) Successful and efficiently conducted foreign intelligence activities are essential to the national security of the United States.

(b) Successful and efficient foreign intelligence activities depend in large part upon concealment of relationships between components of the United States government that carry out those activities and certain of their employees and sources of information.

(c) The disclosure of such relationships to unauthorized persons is detrimental to the successful and efficient conduct of foreign intelligence and counterintelligence activities of the United States.

(d) Individuals who have a concealed relationship with foreign intelligence components of the United States government may be exposed to physical danger if their identities are disclosed to unauthorized persons.

Sec. 3. Title 18, United States Code, is amended by adding the following new chapter:

"Chapter 38--DISCLOSURE OF INFORMATION IDENTIFYING CERTAIN INDIVIDUALS ENGAGED OR ASSISTING IN FOREIGN INTELLIGENCE ACTIVITIES"

Section 800. Definitions. As used in this Chapter:

(a) "Discloses" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available to any unauthorized person.

(b) "Unauthorized" means without authority, right, or permission pursuant to the provisions of a statute or Executive Order concerning access to national security information, the direction of the head of any department or agency engaged in foreign intelligence activities, the order of a judge of any United States court, or a resolution of the United States Senate or House of Representatives which assigns responsiblity for the oversight of intelligence activities.

(c) "Covert agent" means any present or former officer, employee, or source of an intelligence agency or a

ILLEGIB

member of the Armed Forces assigned to duty with an intelligence agency (i) whose present or former relationship with the intelligence agency is protected by the maintenance of a cover or alias identity, or, in the case of a source, is protected by the use of a clandestine means of communication or meeting to conceal the relationship and (ii) who is serving outside the United States or has within the last five years served outside the United States.

(d) "Intelligence agency" means the Central Intelligence Agency or any foreign intelligence component of the Department of Defense.

(e) "Classified information" means any information or material that has been determined by the United States government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.

Section 801. Disclosure of Intelligence Identities.

(a) Whoever knowingly discloses information that correctly identifies another person as a covert agent, with the knowledge that such disclosure is based on classified information, or attempts to do so, is guilty of an offense.

(b) An offense under this section is punishable by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.

(c) There is jurisdiction over an offense under this section committed outside the United States, if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

Section 802. Disclosure of Intelligence Identities by Government Employees.

(a) Whoever, being or having been an employee of the United States government with access to information revealing the identities of covert agents, knowingly discloses information that correctly identifies another person as a covert agent, or attempts to do so, is guilty of an offense.

(b) An offense under this section is punishable by a fine of not more than $25,000 or imprisonment for not more than five years, or both.

(c) There is jurisdiction over an offense under this section committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

CIA PROPOSAL

Unauthorized disclosure of information identifying certain individuals engaged or assisting in intelligence activities.

(a) Whoever, having or having had authorized access to classified information that--

"(1) identifies as an officer or employee of an intelligence agency, or as a member of the Armed Forces assigned to duty with an intelligence agency, any individual (A) who in fact is or has been such an officer, employee, or member, (B) whose identity as such an officer, employee, or member is classified information; or

"(2) identifies as being or having been an agent of, or informant or source of operational assistance to, an intelligence agency any individual (A) who in fact is or has been such an agent, informant, or source, and (B) whose identity as such an agent, informant, or source is classified information, intentionally discloses to any individual not authorized to receive classified information any information that identifies an individual described in paragraph (1) or (2) as such an officer, employee, or member or as such an agent, informant, or source, knowing or having reason to know that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's intelligence relationship to the United States, shall be fined not more than $50,000 or imprisoned not more than ten years, or both.

"(b) Whoever with the intent to impair or impede the foreign intelligence activities of the United States discloses to any individual not authorized to receive classified information any information that--

"(1) identifies as an officer or employee of an intelligence agency, or as a member of the Armed Forces assigned to duty with an intelligence agency, any individual (A) who in fact is or has been such an officer, employee, or member, (B) whose identity as such an officer, employee, or member is classified information; or

"(2) identifies as being or having been an agent of, or informant or source of operational assistance to, an intelligence agency any individual (A) who in fact is or has been such an agent, informant, or source, and (B) whose identity as such an agent, informant, or source is classified information,

knowing or having reason to know that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's intelligence relationship to the United States, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(c) Whoever discloses to any individual not authorized to receive classified information any information that--

(1) identifies as an officer or employee of an intelligence agency, or as a member of the Armed Forces assigned to duty with an intelligence agency, any individual (A) who in fact is or has been such an officer, employee, or member, (B) whose identity as such an officer, employee, or member is classified information; or

(2) identifies as being or having been an agent of, or informant or source of operational assistance to, an intelligence agency any individual (A) who in fact is or has been such an agent, informant, or source, and (B) whose identity as such an agent, informant, or source is classified information,

knowing or having reason to know that the information disclosed so identifies such individual, is based upon classified information, and that the United States is taking affirmative measures to conceal such individual's intelligence relationship to the United States, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(d) It is a defense to a prosecution under section 501 that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

(e) No person shall be subject to prosecution under subsection (b) by virtue of section 2 or 3 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such subsection unless that person has acted with the intent to impair or impede the foreign intelligence activities of the United States.

(f) In any prosecution under section 501(b), proof of intentional disclosure of information described in such section, or inferences derived from proof of such disclosure, shall not alone constitute proof of intent to impair or impede the foreign intelligence activities of the United States.

(g) It shall not be an offense under section 501 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.

(h) There is jurisdiction over an offense under section 501 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

(i) Nothing in this title shall be construed as authority to withhold information from Congress or from a committee of either House of Congress.

(j) For the purposes of this title:

"(1) The term 'classified information' means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

"(2) The term 'authorized', when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of a United States district court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

"(3) The term 'disclose' means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

"(4) The term 'intelligence agency' means the Central Intelligence Agency or any intelligence component of the Department of Defense.

"(5) The term 'informant' means any individual who furnishes or has furnished information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

"(6) The terms 'agent', 'informant', and 'source of operational assistance' do not include individuals who are citizens of the United States residing within the United States.

"(7) The terms 'officer' and 'employee' have the meanings given such terms by sections 2104 and 2105, respectively, of title 5, United States Code.

"(8) The term 'Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

"(9) The term 'United States', when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.".

Issue 2: Should positive foreign intelligence collection directed against United States persons by extraordinary techniques be authorized only if the court finds that the intelligence sought is "significant" foreign intelligence.

Section 221(c) of the SSCI bill permits the special surveillance court to authorize the use of extraordinary techniques (foreign electronic surveillance and foreign physical search) to be directed at a United States person for the purpose of positive foreign intelligence collection if the court finds that "the information sought is foreign intelligence." This provision is acceptable to all of the departments and agencies except the State Department. The State Department wishes to raise the standard so as to require the court to find that the intelligence sought is significant foreign intelligence.

State Department Position:

The Department of State believes the word "significant" should be inserted before the words "foreign intelligence". This would require that, before the court approves the use of extraordinary techniques outside the United States to gather foreign intelligence from a United States person, the court must find that the information sought is "significant foreign intelligence," not merely "foreign intelligence." State Department recognizes that, under §213(b)(1), the President must make a finding that the foreign intelligence is essential to the national security, so there is already a substantial degree of protection. However, the suggested change gives the court increased responsibility to review the government's application for a warrant, thereby giving greater protection against the possibility that the term "foreign intelligence" will be overbroadly interpreted in the future. It will also establish the same standard for review by the court in foreign intelligence as in counter-intelligence and counterterrorism, §221(d)(1).

Working Group Position:

There is no reason to change this language, which has been accepted by the SSCI. Positive foreign intelligence collection against United States persons cannot be approved by the court unless the Attorney General certifies that an appropriate finding was made by the President or the President's designee. Depending on the type of United States person involved, §213 requires a finding by the President that the intelligence is essential to the national security or by

the President's designee that it is important to the national security. These present safeguards render superfluous a requirement that the court find the intelligence to be "significant." Moreover, the change sought by the State Department in effect would invite the court to second-guess the determination made by the President or his designee.

Issue 3: Should CIA and NSA employees serving overseas receive benefits comparable to State Department employees.

Several sections of the SSCI bill would have the effect of equalizing benefits for CIA and NSA employees serving overseas with those of Foreign Service employees. OMB wishes to have these provisions deleted.

OMB Position:

The SSCI bill would provide to CIA and NSA employees the same allowances and benefits provided under legislation for Foreign Service employees, this legislation having traditionally provided the most liberal set of allowances provided to any group of federal employees. In certain cases enhancements to Foreign Service benefits and allowances have been enacted over strong Administration opposition.

While in certain ways they are similar, the Foreign Service, CIA and NSA are sufficiently different in operations and types of activities to warrant determination of merit for benefits and allowances on an individual basis. Further, automatic extension of the liberal Foreign Service benefits to CIA and NSA employees would simply serve to accentuate the inequities which exist between these employees and the vast majority of federal civilian employees overseas, primarily those involved in DoD non-intelligence activities, who do not receive such liberal benefits. The direct costs of this provision under current Foreign Service benefits and allowances we estimate at $3 million annually; if extended to all overseas federal civilian employees (U.S. citizens), the additional costs would be approximately $20 million annually. Further additions to Foreign Service benefits and allowances would, of course, increase these amounts. The intelligence Charter legislation bill is an inappropriate vehicle for this type of special pleading.

CIA Position:

Intelligence agency employees serving overseas work side by side with Foreign Service employees, but typically under conditions more arduous and dangerous. It is anomalous and unfair for there to be a marked discrepancy in benefits for overseas service. These discrepancies are harmful to morale of overseas employees. [redacted] STAT

STAT [redacted] STAT

opposition of OMB to certain of the benefits of the Foreign Service is no justification for perpetuating inequalities.

NSA Position:

NSA considers the situation of its employees to be comparable to that of CIA employees in this regard.

State Department Position:

All U.S. Government civilian personnel required to serve abroad for a major portion of their careers in successive tours in different countries should be entitled to the same, or as similar as possible, pay and benefits. The Department of State, therefore, supports CIA and NSA on this issue.

Issue 4: Should NSA overseas employees be provided special retirement benefits equivalent to the CIA retirement system.

Section 633 of the SSCI bill would establish a special retirement system for NSA applicable to employees serving in certain hazardous or specialized positions overseas. The benefits are equivalent to those of CIA. OMB objects to this proposal.

OMB Position:

The SSCI bill would give certain NSA employees substantially enhanced retirement benefits, comparable to those now received by CIA employees with significant overseas duty. Employees of NSA are now covered by regular civil service retirement. The rationale for higher benefits for CIA employees with overseas duty was the need to provide some added compensation for hazardous duty and to allow early retirement. While this may be appropriate for certain CIA clandestine service officers, NSA employment overseas consists almost exclusively of work at large fixed installations or non-clandestine employee activities. We do not believe it is more hazardous than other normal government employment. Absent such showing, more liberal retirement benefits for NSA employees would be unfair to other federal employees and would encourage requests from other government agencies for similar benefits. Although no recent cost calculations have been made, estimates in the past have suggested that it costs the government fully one-third more for early retirement (age 50/20 years service) than for regular retirement. This added cost would have to be borne from additional appropriations, since the normal employee/employer contributions are, actuarily, insufficient to sustain this higher payout. The Office of Personnel Management, which opposes the NSA retirement annuity enhancement, is currently reviewing the appropriateness and effectiveness of all special retirement provisions. It would be premature to add another special case prior to completion of this study.

NSA Position:

The proposed special retirement provisions are required to cover those NSA employees whose duties are in support of activities abroad and hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal civil service employment. The NSA employees to whom these benefits would be directed are

STAT [redacted] working side-by-side with CIA employees. The proposed provisions would not be a new retirement system but would be an adjunct to and part of the existing Civil Service Retirement System with benefits comparable to those provided under the existing CIA retirement

provisions. Only specially designated field service meeting the above parameters would be included. Because of the conditions of service and the designated activities, not all employees can anticipate serving the period of time required in order to qualify to retire under the normal civil service retirement provisions.

Issue 5: Should the Intelligence Oversight Board be given express authority to review the internal practices, procedures and guidelines of the intelligence agencies.

E.O. 12036 provides that the Intelligence Oversight Board shall "review periodically for accuracy the internal guidelines of each agency within the Intelligence Community concerning the legality or propriety of intelligence activities," as well as reviewing periodically the "practices and procedures of the Inspectors General and General Counsel with responsibilities for agencies within the Intelligence Community for discovery and reporting to the Intelligence Oversight Board intelligence activities that raise questions of legality or propriety." The SSCI bill empowers the Board to inquire into intelligence activities and report to the President on questions of legality or propriety, but does not contain language analogous to that quoted above. The Board would like insertion of a provision empowering the Board to "review the internal practices, procedures and guidelines of entities of the Intelligence Community concerning the oversight, legality and propriety of intelligence activities."

ILLEGIB IOB Position: [redacted]

The Board believes that its authority to review and evaluate the system of Executive Branch oversight is essential. The review function permits the small, part-time Board to increase the effectiveness of Executive Branch intelligence oversight by ensuring that the agencies' internal oversight mechanisms are adequate. No other agency or official is responsible for monitoring the oversight system and reporting to the President on it.

The Board believes that existing oversight responsibilities should not be eliminated at a time when restrictions are being relaxed to permit greater operational flexibility. In addition, the Board's responsibility for monitoring the Executive Branch oversight system is especially important in making the case that Congress should not exercise detailed day-to-day supervision of the intelligence agencies. Including this responsibility in the section on the IOB provides some assurance to the Congress and the public that the Administration maintains its commitment to internal intelligence oversight.

Statutory recognition of the additional responsibility will not limit the President's flexibility with regard to the oversight system. As with all the IOB powers in the statute, this authority is subject to the President's prescriptions.

Working Group Position:

The language on the Intelligence Oversight Board contained in the SSCI bill, although reorganized, substantively is identical to that proposed to the SSCI by the Administration in June 1979. That language in turn arose from careful Working Group consideration, extensive interagency negotiations and express consideration by the SSCI. No last-minute change is warranted, especially since the Board is given ample investigative authority under the existing language of the SSCI bill.

Issue 6: Should the bill contain a requirement that entity heads report to the Intelligence Oversight Board intelligence matters specified by the President.

As currently drafted the SSCI bill (section 141) requires heads of entities to report specified matters to the Attorney General, but does not contain the obligation found in E.O. 12036 to report specified matters to the Intelligence Oversight Board. The Board wishes inclusion of such an obligation.

IOB Position:

E.O. 12036 requires reports to the IOB by Intelligence Community general counsels, inspectors general, and senior officials. The inclusion of "senior officials" in the Executive Order's tripartite reporting scheme ensures that the Board becomes aware of appropriate matters that do not come to the attention of either the general counsel or the inspector general, provides a vehicle for direct communication between the Board and the agency heads, and serves to remind the officials who are ultimately responsible for operational management of their oversight responsibilities. For the statute to require general counsels and inspectors general to report to the Board as specified by the President, while omitting an equivalent responsibility on the part of entity heads, reflects an imbalance in the Executive Branch oversight system and could undermine the valuable practice of "senior officials" reporting to the Board under the Executive Order. Inclusion of a parallel obligation on the part of entity heads to report "any intelligence matters as specified by the President" rounds out the Executive Branch oversight system while retaining Presidential flexibility.

Working Group Position:

As with the previous IOB issue, the Working Group feels that this last-minute change is not justified and that the language carefully worked out by the Administration at the time of its submission to the Committee should be left unchanged.

Issue 7: Should the Central Intelligence Agency have statutory authority to obtain data collected by other entities of the Intelligence Community, including data obtained by technical collection systems, for purposes of processing and analysis.

The SSCI bill provides in section 414(b)(4) that CIA shall:

> (4) analyze foreign intelligence collected by any entity of the intelligence community, and process such intelligence as necessary to fulfill its responsibilities under this Act....

Defense Department Position:

DoD considers section 414(b)(4) is a unilateral CIA effort to settle something that has involved contention in the past between the Agency and various elements of the Department of Defense. CIA has assured NSA orally that application of section 414(b)(4) is not intended to go beyond what is already covered in a recently concluded CIA/NSA Memorandum of Understanding on SIGINT matters. Intelligence elements of the military services, however, have no comparable memorandum with the CIA.

Inclusion of section 414(b)(4) would make it possible for CIA to demand, with explicit statutory authority, direct access to raw and unprocessed technical data collected by DoD organizations. At present, such requests are subject to negotiation between CIA and the collecting agency, and the outcome is dependent upon a variety of circumstances. Such data may reveal sensitive aspects of military operations which are not solely intelligence operations. Expanding such knowledge beyond the Department of Defense can only increase the risk that such operations are compromised, and the safety of those participating, jeopardized. Further, CIA demands for such data often conflict with the needs and priorities of the collecting organization. Such data often requires highly specialized processing, and there may be a legitimate difference of opinion with respect to which agency is best able to provide the quality desired. Circumstances may also bear upon the ability of an agency to process such data as quickly and as reliably as required. In some cases, circumstances may dictate a shared effort. Defense believes simply that the processing of raw data should be left to negotiation between CIA and the collecting agency, and not settled by statutory fiat.

The Defense Department would prefer that section 414(b)(4) be deleted since it considers the paragraph serves no useful purpose.

At a minimum, however, DoD recommends the paragraph be amended to read:

> (4) analyze foreign intelligence collected by any entity of the Intelligence Community, and with the concurrence of the collecting organization, process such intelligence as necessary to fulfill its responsibilities.

CIA Position:

If CIA is to adequately fulfill its responsibility to "produce, publish, and disseminate intelligence to meet the needs of the President, the National Security Council, the Director of National Intelligence, and other officials and departments and agencies" (section 414(b)(5)), it must have the authority to obtain significant foreign intelligence collected by other entities of the Intelligence Community. Contrary to DoD's position, CIA does not seek the right to initially process intelligence collected by other departments and agencies, nor to displace such departments and agencies as the primary processors of their intelligence.

CIA does believe it should have the right to analyze significant foreign intelligence collected by other departments and agencies, including the right to process such intelligence in a timely fashion after the collecting entity has been given an opportunity to do so. Processing should not really be an issue if CIA's right to access is recognized, since the Agency is willing to subordinate its processing needs to those of the collecting entity, provided that CIA is allowed to process and analyze the data in question in a timely fashion.

The National Security Act of 1947, 50 U.S.C. 403(e) allows the Director of Central Intelligence to obtain intelligence collected by other departments and agencies, "to the extent recommended by the National Security Council and approved by the President." While there has been no formal implementation of the 1947 Act's access provision, CIA has cited it on occasion in order to obtain intelligence collected by other entities. It was partly in recognition of CIA's need for access to such intelligence that the proviso was added in the 1947 Act charging the DCI with responsibility "for protecting intelligence sources and methods from unauthorized disclosure." The real issue reflected in the 1947 Act provisions, and now at issue again, is whether there should be an independent entity responsible for performing competing analysis of significant intelligence collected by other entities. The necessity for competing analysis has been recognized by Administration and Congressional officials, and endorsed by the DCI.

The compromise language proposed by DoD is not acceptable because it would give DoD authority to deny requests for access to intelligence. In the past negotiation with DoD on this issue has been unsatisfactory and CIA has either been denied access to DoD-collected intelligence, or has received such intelligence only after extended delays. The provision in the SSCI bill was acceptable to the Committee and should be retained by the Administration.

It would be an acceptable compromise to require the concurrence of the Director of National Intelligence, as opposed to the collecting organization, for CIA to process foreign intelligence collected by other entities of the Intelligence Community.

FOIA AMENDMENT

"The Director shall be responsible for the protection from unauthorized disclosure of intelligence sources and methods and shall establish for departments and agencies minimum security standards for the management and handling of information and material relating to intelligence sources and methods. In furtherance of the responsibility of the Director to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall be exempted from the provisions of any law which require publication or disclosure, or search or review in connection therewith, if such files have been specifically designated by the Director of Central Intelligence to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information; Special activities and foreign intelligence or counterintelligence operations; Investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; Intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; Provided that requests by American citizens and permanent resident aliens for information concerning themselves, made pursuant to Sections 552 and 552a of title 5, shall be processed in accordance with those Sections. The provisions of this Section shall not be superseded except by a provision of law which is enacted after the date of this Amendment and which specifically repeals or modifies the provisions of this Section."

The Director of Central Intelligence

Washington, D.C. 20505

12 February 1980

MEMORANDUM TO THE PRESIDENT

SUBJECT: Testimony on Charters Before the Senate Select Committee on Intelligence

With reference to the charters for the Intelligence Community, once you make your decisions on the points of difference between the Administration and the Huddleston Bill, we all need to communicate those differences to the Senate Select Committee in precise language. One of those points, I believe, should be the organization of the Bill. We have proposed a logical sequence which would successively describe our authorities, the restrictions on us and the system of oversight to check on use of the authorities or possible abuse of the restrictions. We need, I believe, this emphasis on the oversight process to help us ward off amendments that would add restrictions to the Bill. The Huddleston draft obscures the oversight process.

I would, therefore, like to approach my testimony on 26 February with a marked up revision to the Huddleston Bill. It would reorder the sequence of articles as noted above and it would insert the appropriate language where we differ with the Committee's draft. This would not be the tabling of an Administration Bill, but simply a means of clarifying for the Committee the points on which you differ with the Huddleston Bill. It seems to me there is some merit in having before the Members of the SSCI a legislative vehicle which contains the precise Charters language you would like to see them pass.

/s/ Stansfield Turner

STANSFIELD TURNER

ODP-0-200

21 FEB 1980

MEMORANDUM FOR: Chief, Information Services Staff

STAT FROM : [redacted]
Chief, Management Staff, ODP

SUBJECT : S. 2284 - National Intelligence Act of 1980

REFERENCE : a. Your Form 610, same subject, dated 14 Feb 80 (ISS 80-120/2)
b. My memo to SA/OGC, subj, SSCI Intelligence Charter Drafts of 6 November 1979, dtd 14 Dec 79 (ODP-9-1789)

Thank you for the opportunity to review a copy of S. 2284, the "charter" bill recently introduced by the SSCI. We would appreciate if you would reinforce in your response to OGC the comments we expressed in paragraph 2 of reference b (copy attached).

STAT [redacted]

Attachment: a/s

ODP-0-200

21 FEB 1980

MEMORANDUM FOR: Chief, Information Services Staff

STAT FROM : [redacted]
Chief, Management Staff, ODP

SUBJECT : S. 2284 - National Intelligence Act of 1980

REFERENCE : a. Your Form 610, same subject, dated 14 Feb 80 (ISS 80-120/2)
b. My memo to SA/OGC, subj, SSCI Intelligence Charter Drafts of 6 November 1979, dtd 14 Dec 79 (ODP-9-1789)

Thank you for the opportunity to review a copy of S. 2284, the "charter" bill recently introduced by the SSCI. We would appreciate if you would reinforce in your response to OGC the comments we expressed in paragraph 2 of reference b (copy attached). [redacted] STAT

Attachment: a/s

ODP-9-1789
14 DEC 1979

MEMORANDUM FOR: Special Assistant to the General Counsel

STAT

FROM : [redacted]
Chief, Management Staff, ODP

SUBJECT : SSCI Intelligence Charter Drafts of 6 November 1979

REFERENCE : Your Memo, Same Subject: dtd 4 Dec 1979 (OGC 79-10881)

1. We were asked by the Deputy Chief of the Information Services Staff to review the latest drafts of SSCI Intelligence Charter Drafts for Titles I through VII dated 6 November 1979 and respond directly to you with a drop copy to C/ISS.

2. We reviewed Title IV in detail and were delighted to see the following provisions in Title IV and strongly urge that they be retained.

"Sec. 421. (a) In carrying out its functions under this Act, the Agency is authorized to--

(4) maintain and operate full-scale printing facilities for the production of intelligence and intelligence-related materials and lease or purchase and operate computer and communications equipment as appropriate to carry out authorized functions;

(k) Except as otherwise provided in this Act, the authorities contained in subsections (a) through (e) and (i) of this section may be exercised notwithstanding any other provision of law.

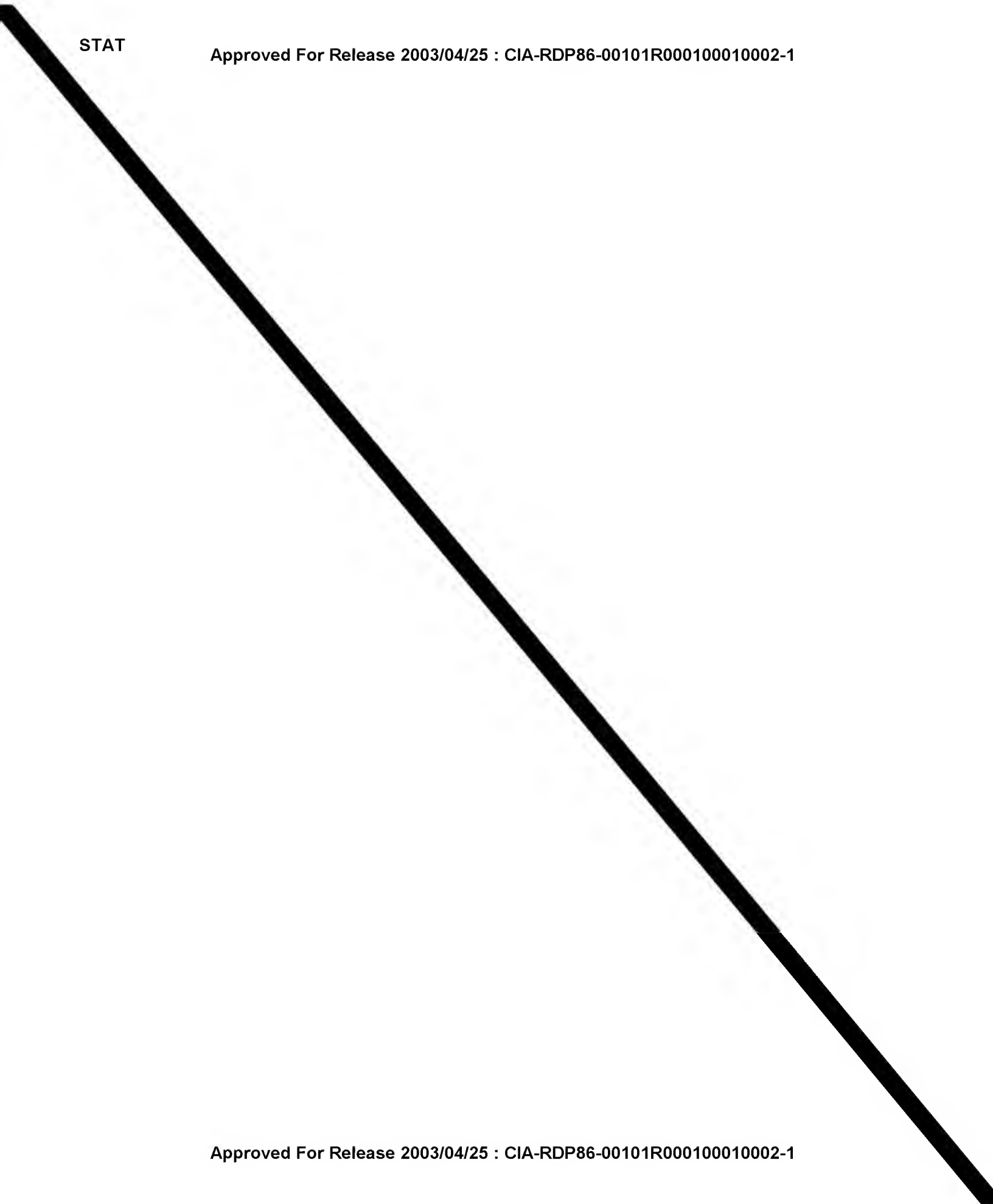
Sec. 422. (b) The provisions of chapter 137, relating to the procurement of property and services, and chapter 139, relating to the procurement of research and development services, of title 10, United States Code, as amended, shall apply...except that the Director of the Agency may specify by regulation when any or all of the provisions of chapters 137 and 139 of title 10 may be waived for the effective performance of authorized functions."

STAT

cc: C/ISS
DD/A/ODP
DD/P/ODP
C/SPS/ODP
C/P&PG/MS/ODP

DISTRIBUTION:
Original and 1- Addressee
2 - O/D/ODP
1 - MS Chrono
2 - ODP Registry

STAT ODP/MS jal/14Dec79



Approved For Release 2003/04/25 : CIA-RDP86-00101R000100010002-1

21 FEB 1980

MEMORANDUM FOR: Office of General Counsel

STAT

ATTENTION: [redacted]

FROM: [redacted]
Acting Director of Security

SUBJECT: S. 2284 - National Intelligence Act of 1980

REFERENCES: (a) Memo from D/Sec to OGC, dated 24 January 1980, subject: Charter Legislation, Title VI, National Security Agency

(b) Memo from AD/Sec to OGC, dated 22 October 1979, subject: Charter Legislation, Title VI, National Security Agency

1. The Chief, Information Services Staff, DDA has forwarded the subject Charter Legislation for comments by this Office. We have reviewed this matter and are pleased to find that basically Office of Security equities are well protected and established. We remain seriously concerned, however, with the sweeping language of Title VI pertaining to the Charter for the National Security Agency.

2. The concerns which we expressed in the referenced memoranda remain very much at issue in the instant title. Specifically we refer to page 94, Section 613(c) where the Director of NSA is given the duty to "prescribe and enforce . . . security rules, regulations, procedures, standards, and requirements with respect to personnel security clearances, authorizations for access to facilities and information, physical security of facilities, ..." This pervasive authority is tempered to a very vague degree by the statement that "enforcement of all such rules, . . . shall be coordinated with the head of each concerned department or agency." Such coordination could merely consist of notifying the CIA that NSA was about to descend on us for inspection purposes.

OS 0 0482A

Moreover, the very next paragraph provides the Director of NSA with the authority to demand any data he might require in fulfilling the aforementioned duties. This clearly would give DIRNSA the right to demand to see our security files over and above the other unacceptably intrusive authorities provided by the previous paragraph.

3. It is interesting to compare this broad, sweeping DIRNSA authority with that given to the Director of National Intelligence on page 50, Section 304(j) wherein the DNI is empowered to establish for departments and agencies "minimum security standards for the management and handling of information and material relating to intelligence sources and methods." Another interesting comparison is to be found in Executive Order 12036 Section 1-1202(a) where the National Security Agency has the responsibility for the "Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community." (Underlining is added for emphasis.) This same Executive Order, on the other hand, empowers the Director of Central Intelligence, Section 1-601(i) to "Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information and products."

4. It is clear that the subject Charter is a blatant expansion of NSA authorities at the expense of those of the DCI and we urge that this matter be clearly and forcefully brought to the attention of the Director so that he may take appropriate action.

STAT

Attachments
References

Distribution:
Orig - Adse
1 - C/ISS/DDA

24 JAN 1980

REFERENCE

(2)

MEMORANDUM FOR: Office of General Counsel

STAT ATTENTION: [redacted]

FROM: Robert W. Gambino
Director of Security

SUBJECT: Charter Legislation, Title VI,
National Security Agency

REFERENCE: Memo from AD/Security to OGC, dated
22 October 1979, same subject

1. In response to your telephonic request of 22 January 1980 for Office of Security comments concerning the proposed Title VI, Charter Legislation, reference is made to the 22 October 1979 memorandum to OGC from the Acting Director of Security, same subject. That memorandum presented the objections of this Office to the wording of Section 613(b) of the proposed legislation and these objections remain valid.

2. The sweeping language of the opening sentence of paragraph 613(b), which gives DIRNSA the responsibility for prescribing and enforcing the Security rules, regulations, procedures, etc., for all U. S. SIGINT activities, remains of serious concern to this Office. While it may be argued that this language is tempered by the second sentence, which states these actions shall be in accord with applicable law and policy guidance from the DCI, the potential for differing interpretations and conflict is great. It must be recognized that even if DIRNSA prescribes rules and procedures that do not conflict with DCI guidance, the legislation as proposed gives DIRNSA authority to enforce those rules and procedures. In order to enforce them, NSA would have the authority to inspect all U. S. SIGINT activities to insure that the rules

OS 0 0218

and regulations are being carried out. This is unacceptable to the Office of Security. Similarly, DIRNSA appears to be insisting on the authority to establish the requirements for personnel security clearances and to have the final voice in decisions concerning individuals who are authorized access to our own SIGINT facilities. This also is unacceptable to the Office of Security.

3. This Office firmly believes that we must obtain relief from the proposed enforcement authority of DIRNSA as it relates to the security of CIA SIGINT activities.

STAT

Robert W. Gambino

22 OCT 1979

MEMORANDUM FOR: Office of General Counsel

STAT ATTENTION: [redacted]

FROM: Acting Director of Security

SUBJECT: Charter Legislation Title VI - National Security Agency

(b) REFERENCE

1. The Office of Security has reviewed Title VI of the proposed Charter Legislation and is struck by the sweeping authority which this Charter imparts to NSA. The result would appear to be a pervasive control over the SIGINT activities conducted by all other members of the Intelligence Community.

2. Insofar as Office of Security equities are concerned, we are particularly troubled by Section 613(b), which authorizes DIRNSA both to prescribe and enforce (emphasis added) security rules and regulations concerning personnel clearances, physical security standards, and facility approvals for all U. S. Government signal intelligence activities. This is a sharp departure from existing practices. It would appear to usurp the existing Director of Central Intelligence functions (expressed in DCID 1/14 [personnel security standards] and USIB physical security standards) as well as the authority of the Director of Security, CIA, with respect to SI approvals within CIA.

3. In an attempt to clarify the statutory responsibility of DIRNSA in the SIGINT field, as well as to preserve the overall DCI authority to set standards for access (thus protecting sources and methods), I suggest that Section 613(b) be rewritten to authorize DIRNSA, in coordination with the DCI, to prescribe (but not enforce), etc. This will allow the DCI to maintain his role in establishing overall security policy and preclude DIRNSA from assuming any security policy or physical inspection role over CIA SIGINT activities.

STAT [redacted]

OS 9 2612-A

OS-9-2612